

to ensure that all carriers have the numbering resources necessary to compete in the rapidly growing telecommunications marketplace.⁴

3. The Commission has adopted mandatory utilization and forecast data reporting requirements to facilitate the monitoring of numbering resource usage within the NANP and promote more efficient use of numbering resources.⁵ Section 52.15(f) of the Commission's rules requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator ("NANPA"),⁶ a Pooling Administrator,⁷ or another telecommunications carrier to report semiannually on their actual and forecasted number usage.⁸ To improve the accuracy of utilization data reporting, the Commission has defined a uniform set of categories in which carriers must classify and report their numbers.⁹ Carriers report this data on FCC Form 502, the NRUF report.¹⁰

4. All telecommunications service providers are subject to audits to verify compliance with Commission regulations and applicable industry guidelines relating to numbering administration.¹¹ The NANPA, the Pooling Administrator, or a state commission, if it has reason to believe that a service provider may have violated the Commission's rules or orders or applicable industry guidelines, may request a "for cause" audit of the service provider by written request to the Bureau.¹² Requests must state the reason for which a "for cause" audit is being requested and include documentation of the alleged anomaly, inconsistency, or violation of the Commission rules or orders or applicable industry guidelines. The Chief of the Bureau will provide carriers up to 30 days to submit a written response to a request for a "for cause" audit.¹³

B. The Commission's Investigation

5. Global NAPs has operated as a competitive local exchange and interexchange carrier in California since 2000.¹⁴ Global NAPs designates all of its numbers for Internet Service Providers

⁴ *NRO Order*, 15 FCC Rcd at 7577, ¶ 1.

⁵ *See id.* at 7582-7621.

⁶ The NANPA is the entity or entities responsible for managing the NANP. 47 C.F.R. § 52.7(e). NeuStar, Inc. ("NeuStar") currently serves as the NANPA.

⁷ The Pooling Administrator is the entity responsible for administering the thousands-block number pool. 47 C.F.R. § 52.7(g). NeuStar also serves as the Pooling Administrator.

⁸ 47 C.F.R. § 52.15(f).

⁹ *NRO Order*, 15 FCC Rcd at 7584, ¶ 14; 47 C.F.R. § 52.15(f)(1).

¹⁰ The NRUF reports are due on or before February 1 and on or before August 1 of each year. *See* 47 C.F.R. § 52.15(f)(6).

¹¹ 47 C.F.R. § 52.15(k)(1).

¹² *NRO Second Report and Order*, 16 FCC Rcd at 345-346, ¶ 87. Carriers receiving numbers are also subject to "random" audits. 47 C.F.R. § 52.15(k)(1).

¹³ 47 C.F.R. § 52.15(k)(3).

¹⁴ Global NAPs obtained a certificate of public convenience and necessity ("CPCN") in California as a limited facilities-based and resale provider of competitive local exchange and interexchange services in 2000. *Application of Global NAPs California, Inc. for Authority to Operate as a Provider of Resale and Facilities Based Telecommunications Service Within the State of California*, California Public Utilities Commission Decision 00-12-039 (Dec. 21, 2000). In 2007, Global NAPs' CPCN was suspended by the CPUC. *Cox California Telcom, LLC v.*

(“ISPs”) and Enhanced Service Providers (“ESPs”), who use the numbers to provide services to their own end-user customers.¹⁵ According to Global NAPs, its ISP and ESP customers “may or may not” use the numbers at all times.¹⁶

6. On February 26, 2008, the California Public Utilities Commission (“CPUC”) requested that the Bureau conduct a “for cause” numbering audit of Global NAPs.¹⁷ The CPUC stated that it had reviewed Global NAPs’ NRUF reports for 2003-2006 and it believed that the company was “not accurately reporting its use of numbering resources.”¹⁸ On May 23 and June 27, 2008, the Bureau sent Global NAPs letters notifying the company of the CPUC’s request.¹⁹ Global NAPs did not respond to the letters. On August 11, 2008, the Bureau notified Global NAPs that it intended to proceed with the audit (the “Engagement Letter”).²⁰ The Engagement Letter informed Global NAPs of the audit objective, the legal authority for the audit, the Bureau’s expectations for Global NAPs’ cooperation with the audit, and the audit procedures. The Engagement Letter also included a Data Request and Internal Control Questionnaire directing Global NAPs to provide information relevant to the audit, including information on Global NAPs’ internal processes and procedures for handling numbering resources. The Bureau directed Global NAPs to contact a specified Bureau contact,²¹ and provide responses to the Data Request and Internal Control Questionnaire by September 8, 2008.

7. Global NAPs received the Engagement Letter,²² but failed to contact the Bureau or provide responses to the Data Request and Internal Control Questionnaire by the September 8, 2008 deadline. On September 17, 2008, Bureau staff contacted Global NAPs’ in-house counsel via telephone regarding the audit. Global NAPs’ counsel acknowledged receipt of the Engagement Letter, and advised

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Global NAPs California, Inc., Opinion Suspending Registrant’s Certificate of Public Convenience and Necessity, Case 06-04-026, Decision 07-06-044 (June 21, 2007).

¹⁵ Letter from James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc., to Michael Amato and Michael Evans, Communications Division, State of California Public Utilities Commission (Feb. 7, 2008) (“Global NAPs February 7 Letter”).

¹⁶ *Id.*

¹⁷ Letter from John M. Leutza, Director, Communications Division, California Public Utilities Commission, to Kris Monteith, Chief, Enforcement Bureau, Federal Communications Commission (Feb. 26, 2008) (“CPUC Letter”).

¹⁸ *Id.* at 1-2.

¹⁹ Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc. (May 23, 2008); Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc. (June 27, 2008).

²⁰ Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc. (Aug. 11, 2008) (“Engagement Letter”).

²¹ Engagement Letter at 4.

²² Although the Engagement Letter was dated and sent via mail on August 11, 2008, Global NAPs received a copy of the final letter via facsimile on August 8, 2008. Global NAPs provided Bureau staff with a copy of the faxed letter during an in-person meeting on November 12, 2008. In addition, a copy of the letter was received at the Global NAPs legal department office in Norwood, Massachusetts on August 14, 2008, as shown by the certified mail return receipt.

the Bureau that a response was forthcoming.²³ After receiving no further response, Bureau staff attempted to contact Global NAPs' counsel again, leaving voice messages on September 25 and 26, 2008. These messages were not returned.

8. On October 27, 2008, the Bureau initiated an investigation into Global NAPs' failure to submit to the audit.²⁴ The Bureau issued a letter of inquiry ("*LOI*") directing Global NAPs, among other things, to provide full responses to the Data Request and Internal Control Questionnaire by November 5, 2008. On the day the *LOI* was issued, Bureau staff spoke with Global NAPs' counsel by telephone, emphasizing the importance of a timely response to the *LOI*, and provided a courtesy copy of the *LOI* via e-mail to counsel.²⁵ Despite these reminders, Global NAPs failed to respond to the *LOI* by the deadline. Global NAPs did not contact Bureau staff prior to the November 5 deadline to convey any difficulties in responding to the *LOI*, or to request an extension.

9. On November 7, 2008, two days after the *LOI* deadline, Global NAPs' counsel contacted the Bureau to request an in-person meeting regarding the investigation. At the meeting, which took place on November 12, 2008, Global NAPs' counsel provided an incomplete, "draft" response to the *LOI*, the Data Request, and the Internal Control Questionnaire, including some documents.²⁶ The draft response was not supported by an affidavit or declaration, signed by an authorized officer of Global NAPs under penalty of perjury, as required by the *LOI*.²⁷ After receiving another call from Bureau staff on November 14, 2008, Global NAPs finally submitted a sworn response. The response did not completely answer the questions in the *LOI* or the Data Request,²⁸ apparently in large part because Global NAPs had failed to follow Commission recordkeeping requirements designed to facilitate audits.

10. In its partial response to the *LOI*, Global NAPs stated that it does not have a formal plan to ensure compliance with FCC rules and industry guidelines for numbering resources. Global NAPs further stated that it has not made specific employees responsible for monitoring compliance and implementation of numbering resource optimization; that it does not have procedures for disseminating information to appropriate staff about changes to FCC rules and industry guidelines on numbering resources within 30 days of release; and does not brief its management at least annually on compliance with numbering resource requirements. Global NAPs also stated that it does not provide training to employees on numbering rules, and that its employees are not aware of numbering processes and procedures.²⁹

11. Finally, Bureau staff have confirmed, through the NANP Administration System, that Global NAPs apparently did not file the mandatory NRUF report due on August 3, 2009.

²³ Global NAPs does not deny that its counsel informed Bureau staff that it would be receiving responsive materials. See Global NAPS Responses to FCC Requests for Production (Nov. 14, 2008) at 4 ("*LOI Response*").

²⁴ Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc. (Oct. 27, 2008) ("*LOI*").

²⁵ See E-mail from Chin Yoo, Attorney-Advisor, Investigations & Hearings Division, Enforcement Bureau, FCC, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc. (Oct. 27, 2008).

²⁶ Global NAPs provided copies of the NRUF reports it had filed with NANPA and an internal e-mail discussing the data sought for the audit, as well as copies of letters sent by the CPUC.

²⁷ See *LOI* at 2.

²⁸ See *infra* ¶¶ 13, 19.

²⁹ Global NAPs Response to Internal Control Questionnaire, Questions I.A.1.-I.A.4, II.A.1-II.B.4.

III. DISCUSSION

A. Global NAPs Apparently Failed to Submit to the Bureau's Audit

12. We conclude that Global NAPs has apparently violated section 52.15(k)(1) of the Commission's rules by failing to submit to the Bureau's audit. All telecommunications providers shall be subject to audits to verify compliance with the Commission's numbering requirements.³⁰ The Commission has clarified that this rule requires providers to be prepared to demonstrate their compliance at any time.³¹ Global NAPs, however, failed to demonstrate such compliance, and simply ignored the Bureau's communications regarding the audit for several months. Indeed, the Bureau provided Global NAPs nearly three months advance notice of its intent to audit Global NAPs' numbering use compliance,³² and upon formally initiating the audit, provided Global NAPs numerous opportunities to respond to its requests. Specifically, the Bureau directed Global NAPs to contact the Bureau and respond to a Data Request and an Internal Control Questionnaire. However, Global NAPs did not contact the Bureau, nor did it respond to the Data Request and Internal Control Questionnaire, by the September 8 deadline. Global NAPs also ignored the subsequent communications by Bureau staff on September 17, 25, and 26.

13. Ultimately, Global NAPs did not provide a formal response to the Data Request and Internal Control Questionnaire until November 19, 2008 – more than two months after its original deadline, almost six months after it first received notice of a possible audit, and only after numerous prompts from Commission staff. Even then, Global NAPs failed to produce many records requested by the Bureau, including copies of numbering applications and a detailed description of its procedures for handling different categories of numbers,³³ in large part because Global NAPs had failed to comply with Commission recordkeeping requirements designed to facilitate audits.³⁴ As a result, by failing to contact the Bureau and fully respond to the Data Request and Internal Control Questionnaire, Global NAPs effectively prevented the Bureau from proceeding with the audit. In short, Global NAPs' response shows that the company has failed to submit to an audit, and has, therefore, apparently willfully and repeatedly violated section 52.15(k)(1) of the Commission's rules.

³⁰ 47 C.F.R. § 52.15(k)(1).

³¹ *NRO Second Report and Order*, 16 FCC Rcd at 346, ¶ 88.

³² As previously stated, the Bureau sent letters on May 23 and June 27, 2008 to Global NAPs notifying the company of the CPUC's request that the Bureau conduct a for cause audit. *See supra* ¶ 6.

³³ *LOI Response*, Response to Data Requests (j), (k), (r).

³⁴ To facilitate audits, all carriers must maintain detailed internal records of their number usage for a period of not less than five years in five categories (administrative, aging, assigned, intermediate, reserved) and eight sub-categories (soft dialtone numbers, ported-out numbers, dealer number pools, test numbers, employee/official numbers, Local Routing Numbers, Temporary Local Directory Numbers, wireless E911 emergency services routing digits/ key (ESRD/ESRK) numbers). *NRO Order*, 15 FCC Rcd at 7601, ¶ 62 and n.104. With respect to the Bureau's request for a detailed description of Global NAPs' processes and procedures for handling different categories of numbers, a company representative admitted that "there are no [such] processes and procedures." *See LOI Response*, Response to Data Request (r); E-mail from Keith Herron, Global NAPs, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc. (Nov. 3, 2008). Additionally, in its response to the Internal Control Questionnaire, Global NAPs: (1) stated that questions regarding "administrative" numbers were "not applicable" to the company, without further explanation; (2) did not respond to questions about "aging" numbers; (3) stated that it "does not utilize an assigned category that is distinguished based on a 5-day period"; (4) stated that it does not separately inventory "intermediate" numbers; and (5) stated that it does not use "reserved" numbers. Global NAPs also stated that it does not separately inventory "ported-out" numbers, one of the eight sub-categories for which carriers must maintain records. Global NAPs Response to Internal Control Questionnaire, Question III.A-E.

B. Global NAPs Apparently Failed to Maintain Accurate Number Use Data and Submit Accurate NRUF Reports

14. Section 52.15(f) requires carriers receiving numbering resources to classify and report utilization data in five categories: administrative, aging, assigned, intermediate, and reserved.³⁵ From February 2002 to December 2003, Global NAPs reported that none of its numbers were assigned,³⁶ even though Commission rules require service providers to activate and commence assignment to end users of numbering resources within six months of receipt.³⁷ In June 2004, however, Global NAPs reported 100 percent of its numbers as assigned. From 2004 to 2009, as its numbering inventory increased from 30,000 to as many as 86,000 numbers, Global NAPs stated in every NRUF report that 100 percent of its numbers were assigned.³⁸ Based on the record, we conclude that Global NAPs was not entitled to classify all of its numbers as assigned, and therefore apparently failed to maintain accurate number use data and submitted inaccurate NRUF reports in violation of Section 52.15(f) of the Commission's rules, from 2004 to 2009.

15. "Assigned" numbers are numbers working in the Public Switched Telephone Network ("PSTN") under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending for five days or less.³⁹ Some numbers "work" in the PSTN only periodically, but remain designated for a particular customer's use even if they are not "working." These include numbers contained in blocks assigned to Centrex or Private Branch Exchange ("PBX") users, or to large entities, which typically use all or a portion of a block of numbers at any given time.⁴⁰ To the extent that they are "working," numbers used for such "intermittent" purposes should be categorized as "assigned." Numbers contained in blocks assigned to Centrex or PBX users may also be categorized as "assigned" (even if not all of the numbers in the block are "working") if 50 percent or more of the numbers in the block are working at all times.⁴¹ If the 50 percent threshold is not met, numbers within the block that are not "working" may not be categorized as "assigned," and must be made available for use by other customers.⁴²

16. According to Global NAPs, all of its numbers are designated for the use of ISP or ESP customers (five, as of November 14, 2008⁴³), for provision of service to the ISP's or ESP's own end-

³⁵ A sixth category, "available numbers," is a residual category. Therefore, the Commission does not require carriers to report such numbers. *NRO Order*, 15 FCC Rcd at 7600 n. 99. Available numbers are defined as numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved. 47 C.F.R. § 52.15(f)(1)(iv).

³⁶ Global NAPs Feb. 1, 2002, Aug. 1, 2002, Mar. 3, 2003, and Dec. 16, 2003 NRUF Reports.

³⁷ *NRO Order*, 15 FCC Rcd at 7678, 7682, ¶¶ 233, 240.

³⁸ Global NAPs June 17, 2004, Nov. 1, 2004, Feb. 1, 2005, Aug. 1, 2005, Feb. 1, 2006, Aug. 1, 2006, Feb. 16, 2007, Aug. 1, 2007, Feb. 1, 2008, Aug. 1, 2008, and April 9, 2009 NRUF Reports.

³⁹ 47 C.F.R. § 52.15(f)(1)(iii). Numbers that are not yet working and have a service order pending for more than five days should not be classified as assigned numbers.

⁴⁰ *NRO Third Report and Order*, 17 FCC Rcd at 303, ¶ 119.

⁴¹ *NRO Third Report and Order*, 17 FCC Rcd at 303-305, ¶¶ 119-122; North American Numbering Plan Numbering Resource Utilization/Forecast Reporting (NRUF) Guidelines, ATIS-0300068 (reissued Nov. 9, 2007) at 17, available at www.atis.org/INC/Docs/finaldocs/NRUF-FinalDocument-11-9-07.doc.

⁴² *Id.*

⁴³ See *LOI Response*, Response to Data Request (f).

users.⁴⁴ Global NAPs admitted that its ISP or ESP customers “may or may not use [the numbers] at all times.”⁴⁵ To the extent that numbers were not “working,” Global NAPs should not have reported the numbers as “assigned,” unless the numbers were in blocks assigned to Centrex or PBX users or large entities and at least 50 percent of the numbers in each block assigned to a customer were “working” at all times.⁴⁶ The record indicates, however, that Global NAPs made no attempt to determine whether 50 percent, or indeed any, of the numbers in the blocks assigned to its customers were “working.” Global NAPs’ counsel orally represented to Bureau staff at the November 12, 2008 meeting that the company does not track its customers’ use of its numbering resources once numbers are designated for a customer’s use. Global NAPs’ responses to the *LOI* and Data Request provide further support for this statement. For example, Global NAPs failed to produce any procedures for handling “assigned” numbers,⁴⁷ and Global NAPs has no written processes or procedures that govern the retrieval of this information from its database and other system(s) to be recorded on its NRUF reports.⁴⁸ Indeed, Global NAPs was unable even to respond to a Commission question about how many numbers were currently in its numbering inventory.⁴⁹ Furthermore, Global NAPs has admitted that it does not train its employees or management on numbering requirements.⁵⁰ Therefore, based on the preponderance of the evidence, we find that Global NAPs has apparently willfully and repeatedly violated section 52.15(f) of the Commission’s rules by failing to maintain accurate number use data and submitting inaccurate NRUF reports from 2004 to 2009.⁵¹

C. Global NAPs Apparently Failed to Submit its August 2009 NRUF Report

17. We conclude that Global NAPs has apparently violated section 52.15(f)(6) of the Commission’s rules by failing to submit an NRUF report due August 3, 2009. Section 52.15(f)(6) requires carriers to file NRUF reports semi-annually, on February 1 and August 1.⁵² As discussed above, the NANP Administration System indicates that Global NAPs did not file the mandatory NRUF report due on August 3, 2009. Based upon the record before us, we conclude that Global NAPs’ apparent failure to comply with the reporting requirements was willful.

D. Global NAPs Apparently Failed to Provide a Timely and Complete Response to the *LOI*

18. Finally, we conclude that Global NAPs has apparently violated Commission orders by failing, after multiple opportunities, to respond fully to the *LOI*. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the

⁴⁴ Global NAPs February 7 Letter at 2.

⁴⁵ *Id.*

⁴⁶ *NRO Third Report and Order*, 17 FCC Rcd at 305, ¶ 122.

⁴⁷ See *supra* n. 34.

⁴⁸ Global NAPs Response to Internal Control Questionnaire, Question III.G.2.

⁴⁹ *LOI Response* at 5. NeuStar has advised Bureau staff that Global NAPs continues to include in its NRUF reports some NXX codes that were reassigned to other reporting carriers after the suspension of Global NAPs’ operating authority in California. See *supra* n. 15.

⁵⁰ Global NAPs Response to Internal Control Questionnaire, Questions III.G.1, II.A.1, 2.

⁵¹ 47 C.F.R. § 52.15(f)(1).

⁵² 47 C.F.R. § 52.15(f)(6)(i).

execution of its functions,”⁵³ and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”⁵⁴ Section 218 of the Act authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”⁵⁵ Section 403 likewise grants the Commission “full authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”⁵⁶

19. In the *LOI*, the Bureau directed Global NAPs to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that Global NAPs failed to submit to the audit, in violation of section 52.15(k)(1) of the Commission’s rules. As evidenced by the Bureau’s facsimile confirmation sheet, Global NAPs received the *LOI* on October 27, 2008, and Bureau staff spoke to Global NAPs counsel by telephone the same day to emphasize the importance of a timely response. The *LOI* specifically warned Global NAPs that failure to respond to the *LOI* could constitute a violation of the Communications Act or the Commission’s rules.⁵⁷ Nevertheless, Global NAPs did not respond to the *LOI* by the due date of November 5, 2008, or request an extension of time in which to meet its obligations under the *LOI*. Several days after the deadline, Global NAPs requested an in-person meeting with Bureau staff, which took place on November 12, 2008. At the meeting, Global NAPs provided staff with a “draft,” unsworn response to the *LOI*. Two days later, after a call from Bureau staff, Global NAPs finally provided a sworn, but incomplete, response.⁵⁸ To date, the Bureau has not received a complete response to the *LOI*. Global NAPs’ willful and repeated failures to timely and adequately respond to the Bureau’s inquiries constitute an apparent violation of a Commission order.⁵⁹

⁵³ 47 U.S.C. § 154(i).

⁵⁴ 47 U.S.C. § 154(j).

⁵⁵ 47 U.S.C. § 218.

⁵⁶ 47 U.S.C. § 403. Section 403 provides, in part: “The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act.”

⁵⁷ *LOI* at 3.

⁵⁸ Global NAPs never responded to Request No. 9 in the *LOI*, see *LOI Response* at 5 (“This response will be compiled and provided as soon as information is received from PMC”), despite its counsel’s assurances that the information would be provided. See E-mail from James R.J. Scheltema, Vice President – Regulatory Affairs, Inc., Global NAPs, Inc., to Chin Yoo, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Nov. 14, 2008).

⁵⁹ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7599-7600, ¶¶ 23-28 (2002) (\$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to LOI); *Globcom, Inc., Notice of Apparent Liability for Forfeiture and Order*, 18 FCC Rcd 19893, 19898 n. 36 (2003) (“*Globcom NAL*”) (subsequent history omitted) (delayed response to an LOI considered dilatory behavior that may result in future sanctions); *BigZoo.Com Corporation, Order of Forfeiture*, 20 FCC Rcd 3954 (Enforcement Bureau 2005) (\$20,000 forfeiture for failure of an entity to provide any response to a USF LOI); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas, Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 14072 (Enforcement Bureau 2004) (\$3,000 forfeiture for a partial response to an LOI); *World Communications Satellite Systems, Inc., Notice of Apparent Liability for Forfeiture*, 18 FCC Rcd 18545 (Enforcement Bureau 2003) (\$10,000 forfeiture for a non-responsive reply to an LOI); *Donald W.*

E. Proposed Forfeiture

20. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶⁰ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.⁶¹ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,”⁶² and our forfeiture guidelines.⁶³

1. Failure to Submit to the Audit

21. The Commission has not established a base forfeiture amount for a failure to submit to a numbering audit in violation of section 52.15(k)(1) of our rules.⁶⁴ The forfeiture guidelines establish a base forfeiture of \$4,000 for the failure to respond to Commission communications.⁶⁵ We find, however, that Global NAPs’ conduct goes beyond a mere failure to respond to Commission communications. Rather, Global NAPs failed to contact the Bureau as directed and failed to respond fully to the Data Request and Internal Control Questionnaire, which in turn prevented the Bureau from conducting the audit. We therefore find that Global NAPs’ failure to submit to the audit warrants a substantial forfeiture amount in light of the important public policy aspects of the underlying rule and the egregiousness of the violation.

22. Audits are the only comprehensive method for verifying the validity and accuracy of utilization data submitted by users of numbering resources.⁶⁶ Audits can also serve a number of other purposes, such as verifying carriers’ compliance with non-quantitative rules or guidelines; deterring carrier behavior that is contrary to numbering resource optimization goals, such as stockpiling of unneeded resources; and allowing the Commission to identify inefficiencies in the manner in which

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Kaminski, Jr., Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enforcement Bureau 2001) (\$4,000 forfeiture after individual refused to respond to an LOI).

⁶⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

⁶¹ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *see also Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008). The Commission most recently adjusted the maximum statutory forfeiture amounts for inflation effective September 2, 2008. *See* 73 FR 44663-5. Apparent violations which occurred before that date were subject to lower statutory maxima.

⁶² 47 U.S.C. § 503(b)(2)(E).

⁶³ 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures.

⁶⁴ Although the Commission stated in the *NRO Third Report and Order* that carriers that fail to comply with audit requests will be denied numbering resources, it did not foreclose use of traditional enforcement tools such as this NAL. *See NRO Third Report and Order*, 17 FCC Rcd at 252, ¶¶ 96-98.

⁶⁵ 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures.

⁶⁶ *NRO Second Report and Order*, 16 FCC Rcd at 344, ¶ 81.

carriers use numbers, such as the excessive use of certain categories of numbers (*e.g.*, administrative, aging, or intermediate numbers).⁶⁷ Viewed in this light, Global NAPs' failure to submit to the Bureau's audit is more than an administrative matter; rather, Global NAPs' behavior prevents the Commission from carrying out its numbering resource administration and optimization objectives.

23. We find that Global NAPs' apparent failure to submit to the audit is egregious and repeated. Global NAPs ignored numerous written and oral communications from the Bureau regarding the audit, failed to contact the Bureau as directed, and only provided the information requested after the Bureau initiated an enforcement investigation into Global NAPs' noncompliance. Misconduct of this type exhibits a blatant disregard for the Commission's authority that cannot be tolerated, and more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. Therefore, taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we conclude that a proposed forfeiture of \$15,000 is warranted for Global NAPs' apparent failure to cooperate with the numbering audit.

2. Maintenance of Accurate Data and Submission of Accurate NRUF Reports

24. The Commission has not previously proposed a forfeiture against a carrier for submitting inaccurate NRUF reports. The Commission has previously proposed forfeitures against carriers who failed to file NRUF reports, using the base forfeiture of \$3,000 in the forfeiture guidelines for failure to file required forms or information.⁶⁸ The Commission's Forfeiture Policy Statement and implementing rules also prescribe a base forfeiture of \$1,000 for failure to maintain required records.⁶⁹ The guidelines explicitly state, however, that "[t]he Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines." The guidelines identify several factors for adjusting a base forfeiture upward, including egregious misconduct, prior violations of FCC requirements, and repeated or continuous violation.⁷⁰ Taking into account the egregious, repeated, and long-standing nature of Global NAPs' violations, we find that a substantial upward adjustment of the forfeiture amount, to \$25,000, is warranted for Global NAPs' failure to maintain accurate number use data and file accurate NRUF reports during the statutory one-year limitations period.

25. The Commission's ability to monitor numbering resource use and accurately predict numbering plan area ("NPA"), or area code, and NANP exhaust is dependent on the quality of the data submitted by carriers.⁷¹ Consistent, accurate, and complete reporting of numbering data serves multiple purposes. First, it allows NANPA to develop a comprehensive database on numbering resource demand, allocation, and use, which is critical to the accurate forecasting of NANP and NPA exhaust.⁷² Second, it deters carriers from requesting and holding excessive quantities of numbering resources for which they

⁶⁷ *Id.*, 16 FCC Rcd at 344, ¶¶ 81, 83.

⁶⁸ See, *e.g.*, *Allpage, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8580 (2002); 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures. In determining the forfeiture amount, the Commission made upward adjustments based on the amount of unreported numbering resources held by the carrier.

⁶⁹ See 47 C.F.R. § 1.80; *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷⁰ 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures.

⁷¹ *NRO Second Report and Order*, 16 FCC Rcd at 344, ¶ 83.

⁷² *NRO Order*, 15 FCC Rcd at 7593, ¶ 37.

have no immediate need.⁷³ Third, it facilitates the Commission's ability to formulate appropriate national policy on numbering resource optimization by providing a complete picture of how numbering resources are being used in all markets.⁷⁴ Finally, it provides the states, which have authority to conduct area code relief, with location-specific data that enables them to make appropriate decisions on such matters.⁷⁵

26. We find that Global NAPs' apparent failure to classify and report its numbering utilization accurately is egregious. The Commission adopted the numbering categories in 2000,⁷⁶ and the 50 percent threshold for numbers used for intermittent purposes in 2001.⁷⁷ These requirements are also incorporated in industry guidelines.⁷⁸ Global NAPs and its parent, Global NAPs, Inc., are sophisticated carriers that have participated in numerous FCC and state commission proceedings.⁷⁹ Yet Global NAPs blatantly disregarded the Commission's rules governing the classification and reporting of numbering resource utilization. As described above, Global NAPs appears to have made no efforts at compliance with numbering requirements, other than submitting perfunctory and inaccurate NRUF reports. Due to the size and scope of the numbering administration programs, the Commission and NANPA, by necessity, must rely on carriers' compliance with our reporting rules for filings that appear to be facially credible.⁸⁰ Where a carrier simply ignores its obligation under the statute, our rules, and industry guidelines to report accurate numbering information, it undermines the integrity and objectives of the Commission's numbering administration and optimization strategies. By reporting all of its numbers as "assigned," Global NAPs was able to obtain and keep up to 86,000 numbers in California without determining whether it was required to return lightly-used blocks.⁸¹ Global NAPs' actions undermine the Commission's purpose in adopting the 50 percent threshold, which is to strike an appropriate balance

⁷³ *Id.* The Commission requires carriers to achieve a 75% utilization threshold before requesting additional numbering resources in a rate center. 47 C.F.R. § 52.15(h).

⁷⁴ *NRO Order*, 15 FCC Rcd at 7593, ¶ 37.

⁷⁵ *Id.*

⁷⁶ *NRO Order*, 15 FCC Rcd at 7582-7592, ¶¶ 10-36. The numbering categories, codified in Section 52.15(f) of the Commission's rules, became effective on July 17, 2000. See 65 FR 37703, 43251.

⁷⁷ *NRO Third Report and Order*, 17 FCC Rcd at 303-305, ¶¶ 119-122. The requirements adopted in the *NRO Third Report and Order* became effective on March 14, 2002. See 67 FR 6431.

⁷⁸ See Guidelines for the Administration of Telephone Numbers, ATIS-0300070 (Nov. 9, 2007) at 3, available at www.atis.org/INC/Docs/finaldocs/TN-Administration-Guidelines-Final-Documents-11-9-07.doc; North American Numbering Plan Numbering Resource Utilization/Forecast Reporting (NRUF) Guidelines, ATIS-0300068 (Nov. 9, 2007) at § 6.2, available at www.atis.org/INC/Docs/finaldocs/NRUF-FinalDocument-11-9-07.doc.

⁷⁹ See, e.g., *Bell-Atlantic-Delaware, Inc., et al. v. Global NAPs, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 12946 (1999) (Global NAPs I), *recon denied*, Order on Reconsideration, 15 FCC Rcd 5997 (2000) (Global NAPs I Recon Order), *aff'd sub nom.*, *Global NAPs, Inc. v. FCC*, 247 F.3d 252 (D.C. Cir. 2001), *cert. denied*, 122 S.Ct. 808 (2002); *Global NAPs, Inc. v. Verizon Communications, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 4031 (2002); *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the Massachusetts Department of Telecommunications and Energy Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 15 FCC Rcd 4943 (2000).

⁸⁰ NANPA is required to review submitted utilization and forecast data for inconsistencies and anomalies. *NRO Second Report and Order*, 16 FCC Rcd 345 at n.233.

⁸¹ The Commission uses numbering data to identify carriers that are holding excessive inventories of numbers and to facilitate reclamation of those numbers. *NRO Order*, 15 FCC Rcd at 7600, ¶ 61. In areas where thousands-blocks pooling has been implemented, service providers must donate thousands-blocks with ten percent or less "contamination" (*i.e.* with more than ninety percent of numbers in the block "available") to the number pool for the applicable rate center. 47 C.F.R. §§ 52.20(c); 52.7(h).

between carriers' legitimate need to provide numbers for intermittent use to their customers and our responsibility to ensure that scarce numbering resources do not lie fallow.⁸²

27. We also find that Global NAPs' apparent violations were repeated over a five-year period from June 2004 to April 2009, during which Global NAPs submitted inaccurate reports for each semiannual reporting period. We note that under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that occurred within one year of the date of this NAL.⁸³ Therefore, we only propose a forfeiture for inaccurate NRUF reports filed within one year of this NAL – *i.e.*, the April 9, 2009 report. It is a well-settled principle of law, however, that the Commission may properly consider prior offenses that occurred more than one year before a violation to establish the context for determining an appropriate forfeiture amount.⁸⁴ We further note that Global NAPs' submission of inaccurate reports continued even after the Bureau commenced an investigation into the company's compliance with numbering requirements. Given the longstanding and repeated nature of the inaccurate submissions, as well as the egregious nature of the violation, we consider Global NAPs' submission of inaccurate NRUF reports on April 9, 2009 to be a very serious instance for which a sizable increase in the base forfeiture amount, to \$25,000, is warranted. We also find that the proposed forfeiture is reasonable when compared to similar forfeitures in our Universal Service Fund ("USF") enforcement actions.⁸⁵

3. Failure to Submit August 2009 NRUF Report

28. As discussed above, the Commission has emphasized that consistent, accurate, and complete reporting of number utilization and forecast data is critical to promoting efficiency and avoiding premature exhaustion of numbering resources.⁸⁶ The Commission has previously established a base forfeiture of \$3,000 for the failure to submit NRUF reports.⁸⁷ However, we find that the egregious nature of Global NAPs' violation warrants a substantial upward adjustment from the base forfeiture. Global NAPs has displayed a blatant disregard for the Commission's numbering requirements by filing

⁸² *NRO Third Report and Order*, 17 FCC Rcd at 304-305, ¶ 122.

⁸³ 47 U.S.C § 503(b)(6)(B); 47 C.F.R. § 1.80(c)(3).

⁸⁴ See, e.g., *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8701 ¶ 28 (2007); *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72, ¶ 8 (2000) ("While the Commission may not . . . find the Licensees liable for violations committed prior to [the NAL], it may lawfully look at facts arising before that date in determining an appropriate forfeiture amount."); *Cate Communications Corp.*, Memorandum Opinion & Order, 60 Rad Reg 2d 1386, 1388, ¶ 7 (1986) (holding that facts prior to the statute of limitations period may be used to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations"); *Eastern Broadcasting Corp.*, Memorandum Opinion & Order, 11 FCC 2d 193, 195, ¶ 6 (1967) ("Earlier events may be utilized to shed light on the true character of matters occurring within the limitations period.").

⁸⁵ See, e.g., *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13687, ¶ 19 (2007) (proposing \$50,000 forfeiture for a contributor's failure to maintain and provide records and documentation to justify information reported in Telecommunications Reporting Worksheets); *Globcom NAL*, 18 FCC Rcd at 19905, ¶ 32 (proposing \$50,000 forfeiture for each failure to file quarterly Telecommunications Reporting Worksheets within one-year limitations period, where company failed to file or filed inaccurate Telecommunications Reporting Worksheets for more than two years).

⁸⁶ *NRO Order*, 15 FCC Rcd at 7593, ¶ 37.

⁸⁷ See, e.g., *Litelco Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8625 (2001). The Commission has proposed upward adjustments of the \$3,000 base forfeiture for carriers who hold 10 or more NXX codes. See, e.g., *Allpage*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8580, 8582 ¶ 7 (2001) (doubling base forfeiture for carrier holding 26 NXX codes). However, Global NAPs has never held 100,000 or more numbers, or the equivalent of 10 or more NXX codes.

inaccurate NRUF reports for the past five years, as discussed above. Its failure to file the August 2009 report simply continues this pattern and, like the submission of inaccurate reports, frustrates proper administration of the Commission's numbering administration and optimization strategies.⁸⁸ Global NAPs' failure to file is even more egregious given that the company had already failed to respond on a timely basis to both an audit and an investigation of the company's numbering practices.⁸⁹ Therefore, taking into consideration the factors expressed in section 503(b)(2)(D) of the Act, we find that a forfeiture in the amount of \$25,000 is appropriate.

4. Failure to Respond to Letter of Inquiry

29. The forfeiture guidelines establish a base forfeiture amount of \$4,000 for failure to respond to a Commission communication.⁹⁰ As discussed above, the Bureau issued the *LOI* after Global NAPs failed to respond to multiple written and telephone attempts to reach the company regarding the audit. Global NAPs failed to respond to the *LOI* by the due date, despite an explicit warning that failure to respond appropriately to the *LOI* could in itself constitute a violation of the Communications Act or our rules.⁹¹ When Global NAPs did finally respond, after another call from Bureau staff, its response was incomplete. We find that Global NAPs' apparent pattern of ignoring Commission directives, its delay in responding to the *LOI*, and its failure to provide a complete response to the Bureau's *LOI* warrant an upward adjustment to the base amount. Misconduct of this type exhibits a disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules.

30. In the past, we have proposed a forfeiture of \$8,000 for a company's failure to respond in a timely and complete manner to a Commission letter of inquiry. In that instance, we lowered the forfeiture, in part, because the company was not represented by counsel.⁹² We have also proposed a forfeiture as high as \$15,000 for a company that submitted a substantially late response that lacked the required supporting affidavit or declaration,⁹³ and forfeitures of \$20,000 for companies that have failed to respond entirely.⁹⁴ In this case, Global NAPs did provide a portion of the information and documents it was ordered to produce by the Bureau's *LOI*. Global NAPs has been represented throughout the Bureau's inquiry by counsel, however, and the delay in its response continued a pattern of disregarding Commission directives that began with the Engagement Letter for the audit. Therefore, taking into account the factors enumerated in section 503(b)(2)(D) of the Act, we conclude that an upward adjustment of the base amount to \$15,000 is justified for Global NAPs' apparent repeated and willful failure to provide a timely and complete response to the *LOI*.

⁸⁸ See *supra* ¶¶ 26-27.

⁸⁹ See *supra* § III.A, D.

⁹⁰ 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures.

⁹¹ *LOI* at 3.

⁹² *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13319, ¶ 31 (2005).

⁹³ *Communications Options, Inc.*, 22 FCC Rcd at 13687-13688, ¶ 21.

⁹⁴ See, e.g., *BigZoo.com Corp.*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005).

IV. ORDERING CLAUSES

31. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Global NAPs California, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$80,000 for willfully and repeatedly violating the Act and the Commission's rules.

32. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁹⁵ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, Global NAPs California, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

33. IT IS FURTHER ORDERED THAT, pursuant to sections 218 and 251(e)(2) of the Act, 47 U.S.C. §§ 218 and 251(e)(2), and sections 52.15(k)(1) and 52.15(f) of the Commission's rules, 47 C.F.R. §§ 52.15(k)(1) and 52.15(f), within thirty days of the release of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, Global NAPs California, Inc. SHALL SUBMIT a report, supported by a sworn statement or declaration under penalty of perjury by a corporate officer, stating its plan promptly to come into compliance with the reporting and recordkeeping rules discussed herein.

34. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i), 4(j), 218, and 403 of the Act, 47 U.S.C. §§ 4(i), 4(j), 218, 403, Global NAPs California, Inc. shall fully respond to the October 27, 2008 Letter of Inquiry sent by the FCC's Enforcement Bureau within 30 days of the release of this order.

35. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Global NAPs California, Inc. will also send electronic notification within forty-eight (48) hours of the date said payment is made to Hillary.DeNigro@fcc.gov.

36. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. Global NAPs California, Inc. also will e-mail an electronic copy of its response to Hillary.DeNigro@fcc.gov.

⁹⁵ See 47 C.F.R. § 1.1914.

37. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

38. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER shall be sent by certified mail, return receipt requested, to James R.J. Scheltema, Vice President – Regulatory Affairs, Global NAPs, Inc., Southern Regional Office, 1311 East La Rua Street, Pensacola, FL 32501.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau